IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No. 209/1996
Reserved on: 17.7.2007
Date of decision 2.8.2007

Smt. Ichhya Dogra and others. Appellants

Versus

Om Parkash and others. Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Appellants: Mr. Bhupender Gupta, Sr. Advocate with Mr. Janesh Gupta, Advocate.

For the Respondents: Mr. Sanjeev Kuthiala, Advocate.

Rajiv Sharma, J.

This Regular Second Appeal arises out of the judgment and decree passed by the Additional District Judge (1) Kangra at Dharamshala camp at Una on 25.4.1996

The brief facts necessary for the adjudication of the present appeal are that the respondents (hereinafter referred to as the plaintiffs for convenience sake) had filed a suit in the Court of Sub Judge (II), Amb, Division Una on 12.5.1988 for the declaration with permanent injunction. The trial court on the basis of the pleadings of the parties had framed the following issues:

1. Whether the entries in the revenue record in favour of the defendants as owners are illegal and incorrect, as alleged?

OPP.

1-A. Whether the Punnu was tenant at will of the suit property?

OPP

1-B. Whether plaintiffs are entitled to the relief of declaration?

OPP.

1-C. Whether the plaintiffs are entitled to the permanent injunction? OPP.

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

2. Whether the suit is not maintainable? OPP

3. Whether the plaintiffs are estopped to file the suit due to their acts conduct etc? OPD.

The trial court had recorded the following findings on the issues framed:

Issue No.1 Yes
Issue No.1-A Yes
Issue No.1-B Yes, declaration qua tenancy.
Issue No.1-C Yes
Issue No.2 No
Issue No.3 No
Relief Suit decreed as per operative portion of the judgment.

The trial court had decreed the suit on 27.11.1993. The appellants-defendants (hereinafter referred to as the defendants for convenience sake) had filed the appeal in the court of Additional District Judge-I, Kangra at Dharamshala on 6.1.1994. The Additional District Judge had framed the following points for determination:

1. **Whether the impugned judgment and decree requires any interference?**
2. **Final order.**

The findings recorded by the Additional District Judge are as under:

Point No.1 No.

Final order Appeal dismissed as per operative part of the judgment.

The Additional District Judge had dismissed the appeal on 25.4.1996. This second appeal has been preferred by the defendants against the judgment and decree passed by the Additional District Judge dated 25.4.1996. Initially at the time of admission of this appeal on 23.9.1998, no substantial questions of law were framed. The following substantial questions of law were framed on 26.6.2007:

1. **Whether the jurisdiction of the Civil Court is barred in view of the Full Court judgment reported in S.L.C. 1991 (1) 223 Chuhniya V. Jindo?**
2. **Whether the suit is apparently time barred being filed in the year 1988 assailing the order of the year 1976?**
3. **Whether in the facts and circumstances of the present case the alleged tenancy, if any, held by the plaintiffs had merged into ownership and they have become co-sharers in the joint khata?**

The appellant Yudhishter Lal died during the pendency of this second appeal and his legal representatives were directed to be brought on record vide order dated 5.9.2003.

Since all the questions are inter-connected, therefore, can be conveniently discussed together.

Mr. Bhupender Gupta, Sr. Advocate had strenuously argued that the judgment and decree passed by the Additional District Judge are not sustainable in the eyes of law.

Mr. Sanjeev Kuthiala, Advocate had supported the judgment and decree passed by the Additional District Judge.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

There is no dispute that the plaintiffs have purchased the land from Lekh Raj and Chet Ram. The dispute was only with regard to the tenancy of Sh. Punnu. As per Ex.P-3, copy of jamabandi for the year 1965-66, Punnu son of Dittu was recorded as *Batai Nisif* in respect of Khasra No.10/18/5, 22/2, 23/1, 27, 38 min measuring 11-8 kanals. Sh. Punnu held tenancy rights over khasra No. 10/18/5, 19/1, 22/2, 23/1, 10/27, 38 min, measuring 13-8 kanals as per the revenue entries recorded in the jamabandi for the year 1970-71 (Ex.P-4). Sh. Punnu died on 10.5.1974. Punnu was recorded as tenant-at-will in the Khasra Girdawari from October, 1971 to April, 1976. The Jamabandi Misal Haquiat Ex.P-1 was prepared and khasra Nos.323 and 324 had been carved out of old khasra

No. 10/18/5, 22/2, 19/1, 23/1, 27 min and 10/27 measuring 0-46-39 and recorded in the self-cultivation of Om Prakash and Ram Saroop. Vide Ex.P-2, copy of Missal Haquiat, khasra No. 242 measuring 1-03-79 hectares has been carved out of old khasra Nos. 7/24/3, 9/4, 38/1 min, 9/38/3 min and 3/3 min and classification of land is *'Bagicha Barani Faldar'.* In the copy of jamabandi for the year 1980-81 (Ex.D-1), khasra Nos. 10/18-5, 19/1, 22/2, 23/1 and 27 measuring 9-8 kanals are recorded in the ownership and possession of Om Parkash and Ram Saroop to the extent of half share and Yudhister Lal, Ram Nath and Jagan Nath sons of Babu Ram to the extent of other half share. The AC-IInd grade had ordered the correction in favour of owners vide order dated 27.2.1976 Ex.D-2. Vide Ex.D-3, the order passed by the Revenue Officer was given effect to in *rapat rojnamacha*. In Misal Haquiat for the year 1984-85, Ex.D-4, khasra Nos.242 and 251 were recorded in possession of owners. Ex.D-8 is the order of partition dated 31.3.1981. The partition was effected by AC-IInd Grade. The Kurahas were prepared vide Ex.P-9 and P-10. The instrument of partition dated 28.5.1981 is Ex.D-11. The Tehsildar exercising the powers of AC-Ist Grade on 23.10.1992 held that since the question of title was involved, the partition could not be done and the same was to be settled by the civil court. The copy of the order is Ex. D-12. Shri Chet Ram had moved an application vide Ex.P-7 for correction and claimed therein that tenant Milkhi Ram and Punnu had died and the entries be effected in the name of the owners. Without issuing any notice to the heirs of the tenants, the order Ex.P-8 was passed by the Sub Divisional Magistrate. He remanded the case to the AC-Ist Grade. On the basis of the documentary evidence on record, it is evident that Punnu held tenancy rights in respect of land measuring 13-8 kanals comprised in Khasra No. 10/18/5/, 22/2, 19/1, 23/1, 27, 38 min as per jamabandi for the year 1970-71. The relationship of landlord and tenant stood established and there was nothing on record to establish that Punnu was ever dispossessed in accordance with law or his tenancy was ever put to an

end. The order passed by the AC-Ist Grade without any notice to the party dated 27.2.1976 was void.

In ***Chuhniya Devi Versus Jindu Ram***, 1991 (1) SLC 223, this Court has held as under:

> **"that an order made by the competent authority under the H.P. Land Revenue Act, 1954, is open to challenge before a civil court to the extent that it relates to matters falling within the ambit of section 37 (3) and section 46 of that Act."**

In view of section 37 (3) read with section 46 of the H.P. Land Revenue act, 1954, the civil court had jurisdiction to entertain and decide the suit.

The estate of tenancy is an independent estate in the eyes of law. The ownership rights were purchased by the plaintiffs from Lekh Raj and Chet Ram whereas Punnu held independent tenancy rights. There could not any merger of both these independent rights.

The suit filed by the plaintiffs was within limitation. The partition proceedings were started in the year 1981. The present suit was filed in the year 1988. The matter was remanded back by the appellate authority. The Tehsildar while exercising the powers of AC-Ist Grade held in October, 1992 that there was question of title involved and the parties should get it cleared from the competent court. The PW-1 Om Prakash had testified that the defendants had threatened the plaintiffs to dispossess them from the suit land in the year 1988 and the suit was instituted in the year 1988. This question is no more *res integra* in view of the law laid down by the Punjab and Haryana High Court in ***Ibrahim alias Dharam Vir Versus Sharifan alias Shanti,*** 1979 Punjab Law Journal 469. Their Lordships have held as under:

> "**While controverting the aforesaid findings of the learned Single Judge, it was contended by Mr. Aggarwal, learned counsel for the appellant, that cause of action arose to the plaintiff in April, 1969, when the defendant actually threatened to take forcible possession of the land from the plaintiff and that mere sanction of the mutation with respect to half share of**

the land in dispute in the name of the defendant did not give any cause of action to the plaintiff, especially when he had continued to be in exclusive possession of the land without any interference of any kind by the defendant. On the other hand, it was contended by Mr. Kapur, learned counsel for the respondents, that a cloud was actually cast on the right of the plaintiff in the year 1957 when after the death of Akbar mutation of inheritance was sanctioned in favour of the plaintiff, thedefendant and their mother in equal shares; that the right to sue first accrued to the plaintiff, on the date when the said mutation was sanctioned and the suit having been filed beyond the period of three years was clearly barred by time.

After giving our thoughtful consideration to the entire matter, we find that there is considerable force in the contention of the learned counsel for the appellant.

It may be observed at the outset that the word 'first' occurring in article 58 of the Act is of no significance at all for deciding the issue of limitation so far as the facts of the case in hand are concerned as the main point that requires determination is whether mere entry of mutation in the name of the defendant would furnish a cause of action to the plaintiff to file a suit for declaration or not. There is no dispute that mutation was sanctioned in favour of the defendant after the death of Akbar and in case such an entry furnishes a cause of action, then certainly the suit would be barred by limitation. Even Mr. Aggarwal very fairly conceded this proposition. But what was argued by him was that mere entry of mutation did not furnish any cause of action and in support of his contention he relied on a Division Bench judgment of this Court in Niamat Singh v. Darbari Singh etc., 1956 P.L. R. 461. In our view, the conention of the learned counsel has considerable force. The plaintiff continued to be in possession of the entire property even after the sanction of the mutations in the name of the defendant after the death of her father Akbar orher mother Smt. Nanhi or her uncle Bhiku. The defendant was never given any share in the rent, nor was she given any produce out of the land of her share. In this situation, no cloud was cast on the title of the plaintiff by mere entry of the mutation in the name of defendant. Further, there is no proof on the record to show that before April, 1969, by any act or assertion of the defendant the right of the plaintiff

was ever actually jeopardized. The defendant is occupying a house in the village. The assertion of the plaintiff is that it was given by him to her out of compassion, while the plea of the defendant is that she occupied it as of right. Be that as it may, the fact remains that so far as the agriculture land is concerned, the defendant after the sanction of the mutations never asserted her right to her share in the land in dispute, nor did she ever get any rent or produce and that it was in the year 1969 that she tried to assert her right and interfere with the possession of the plaintiff. In this situation, mere entry of a mutation in the name of the defendant would not furnish any cause of action to the plaintiff. This view of ours finds full support from the judgment of the Division Bench in Niamat Singh's case. Thus, we do not agree with the learned Single Judge that the cause of action arose when the mutation was entered in the name of the defendant and consequently, reverse the finding on issue No.4 and hold that the suit filed by the plaintiff is within limitation."

Mr. Bhupender Gupta, Senior Advocate had strenuously argued that the plaintiffs could not inherit the tenancy rights of late Sh. Punnu since Punnu had died in the month of May, 1974 and the H.P. Tenancy and Land Reforms Rules, 1975, came into existence in the month of October, 1975.

Mr. Sanjeev Kuthiala, Advocate had argued that the plaintiffs had inherited the tenancy rights in view of section 45 of the H.P. Tenancy and Land Reforms Act, 1972. There is a considerable force in the submission of Mr. Sanjeev Kuthiala. The plaintiffs in view of section 45 of the H.P. Tenancy and Land Reforms Act, 1972 had inherited the tenancy rights of late Shri Punnu.

This Court in ***Mohar Singh Vs. Manju Devi and others***, 1997 (1) S.L.J. 304 has laid down that the proprietary rights are conferred upon the tenants automatically and rest of the matter is procedural as required under the Act and the rules framed thereunder. This Court has held as under:

"In case the appellant was a tenant in respect of suit land as being claimed by him, or he had any concern with it, then instead of supporting the claim of the plaintiffs in civil suit wherein judgment P/5 was passed, he would have applied for becoming party to the said suit and would have further contested the claim of the plaintiffs therein. It appears that with a view to support their case knowing well that the plaintiff Sh. Chandu Lal, who was arrayed as defendant in the suit wherein Exts. P/5 was passed and said Chandu Lal is putting up independent title to the land in suit (which is the same in Ext.P/5 as in the present suit), that being the petition both the courts below have rightly come to the conclusion that the plaintiff is the owner in possession of the land in question having inherited the same from Sh. Brij Lal. Needless to point out here that after coming into force of the Himachal Pradesh Tenancy and Land Reforms Act, 1972, the conferment of proprietary right is automatic and by operation of law. Rest of the matter is procedural as required under the Act and the rules framed thereunder."

The upshot of the above discussion is that:

i) The suit was maintainable before the civil court in view of sections 37 (3) and 46 of the H.P. Land Revenue Act, 1954;

ii) the suit was within limitation;

iii) There is no merger of the independent rights as argued.

iv) The plaintiffs had inherited the tenancy from late Sh. Punnu and the proprietary rig hts were conferred on them in view of section 45 of the H.P. Tenancy and Land Reforms Act, 1972.

Accordingly there is no merit in the second appeal and the same is dismissed with no order as to costs.

(Rajiv Sharma), J.

August 2, 2007 *Awasthi*